

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend, repeal, and add Sections 14838.5 and 14839 of, and to add and repeal Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2 of, the Government Code, and to amend Section 19404 of the Welfare and Institutions Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, Negrete McLeod. State contracts: participation goals: persons with developmental disabilities business enterprises.

Existing law establishes participation goals for various enterprises to participate in contracts with state departments awarded for construction, services, materials, supplies, equipment, alterations, repairs, or improvements.

This bill would establish statewide participation goals of not less than 1% for persons with developmental disabilities business enterprises to participate in contracts awarded by a state agency for goods and services, and require, until June 30, 2014, that each state agency awarding contracts take specified actions to encourage that participation, as provided.

This bill would impose ~~a specified civil penalty~~ *penalties* for ~~initial~~ *the first* and subsequent violations of providing false or fraudulent information with respect to the qualification of a persons with developmental disabilities business enterprise, and would prohibit the person or entity that made the false or fraudulent statement from bidding on or participating in state contracts for specified periods of time.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 15 (commencing with Section 8899.50)
2 is added to Division 1 of Title 2 of the Government Code, to read:

3
4 CHAPTER 15. PERSONS WITH DEVELOPMENTAL DISABILITIES
5 BUSINESS ENTERPRISE PARTICIPATION GOALS FOR STATE
6 CONTRACTS
7

8 8899.50. (a) This chapter shall be known, and may be cited,
9 as the Persons with Developmental Disabilities Business Enterprise
10 Program.

11 (b) The Legislature finds and declares all of the following:

12 (1) There were 215,000 persons with developmental disabilities
13 in California in 2006, and of these persons, 86,265 were persons
14 of working age, between the ages of 22 and 61 years.

15 (2) Fewer than 20,000, or 23 percent, of the persons of working
16 age with developmental disabilities engage in any form of
17 employment.

18 (3) Many persons with developmental disabilities have expressed
19 their desire to work and earn wages as productive members of
20 society.

21 (4) Persons with developmental disabilities include persons
22 whose disabilities present significant challenges to locate and
23 secure employment.

24 (5) Often, larger than the challenge of the disability itself, is the
25 lack of recognition by employers of the skills, abilities, and
26 dedication of persons with developmental disabilities to work
27 effectively.

28 (6) The State of California has an opportunity to take proactive
29 steps to contract with companies that are owned, managed, or
30 controlled by, or that employ, persons with developmental
31 disabilities.

32 (c) It is the intent of the Legislature to do all of the following:

33 (1) Recognize the potential contribution of persons with
34 developmental disabilities to the workforce in the state.

1 (2) Encourage state agencies to contract with companies owned,
2 managed, or controlled by, or that employ, persons with
3 developmental disabilities, thereby encouraging greater
4 independence and community involvement.

5 (3) Reduce pressure on the state budget by encouraging persons
6 with developmental disabilities to earn wages, pay taxes, and
7 collect fewer state benefits.

8 (4) Have state agencies take all practical actions to meet or
9 exceed the persons with developmental disabilities business
10 enterprise participation goals of not less than 1 percent of the
11 number of contracts for goods or services awarded by state
12 agencies.

13 8899.51. As used in this chapter:

14 (a) “Awarding department” means any state agency, department,
15 governmental entity, or other officer or entity empowered by law
16 to enter into contracts for, and on behalf of, the State of California.

17 (b) “Contract” includes any agreement or joint development
18 agreement to provide goods or services in the performance of a
19 contract, franchise, concession, or lease granted, let, or awarded
20 for, and on behalf of, the State of California. “Goods or services”
21 include labor, services, materials, supplies, equipment, or other
22 goods.

23 (c) “Commercially useful function” means a function performed
24 by a persons with developmental disabilities business enterprise
25 in which the persons with developmental disabilities business
26 enterprise does all of the following:

27 (1) Is responsible for the execution of a distinct element of the
28 work of the contract for goods or services.

29 (2) Carries out its obligation by actually performing, managing,
30 or supervising the work involved.

31 (3) Performs work that is normal for its business services and
32 functions.

33 (4) Is not subcontracting a portion of the work that is greater
34 than that expected to be subcontracted by normal industry practice.

35 A persons with developmental disabilities business enterprise
36 shall not be considered to perform a commercially useful function
37 if its role is limited to that of an extra participant in a transaction,
38 contract, or project through which funds are passed in order to
39 obtain the appearance of participation by a persons with
40 developmental disabilities business enterprise.

(d) “Contractor” means any individual, firm, partnership, joint venture, corporation, limited liability company, organization, or other person or entity, or combination thereof, that submits a bid and enters into a contract. A contractor includes a subcontractor or a supplier that provides goods or services with respect to a contract.

(e) “Developmental disability” means a disability, specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, rendering the affected person eligible to participate in programs of rehabilitation, education, or social services conducted by or on behalf of a public agency.

(f) “Goal” means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(g) “Persons with developmental disabilities business enterprise” means a business or organization certified pursuant to regulations described in Section 8899.54 as meeting any of the following:

(1) A business concern at least 51 percent owned by one or more persons with a developmental disability.

(2) A business concern managed by, and the daily business operations controlled by, one or more persons with a developmental disability.

(3) A community-based nonprofit organization that employs persons with a developmental disability that meets any of the following conditions:

(A) The organization operates under a special certificate issued pursuant to Section 1191.5 of Title 29 of the United States Code.

(B) The organization has a special license issued to it under Section 214 of Title 29 of the United States Code.

(C) The organization meets the criteria of Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code for providing habilitation services.

8899.52. Notwithstanding any other law, all contracts awarded by an awarding department shall have statewide participation goals of not less than 1 percent for persons with developmental disabilities business enterprises. These goals apply to the total number of contracts granted, let, or awarded each year by the awarding department.

8899.53. In order to encourage the participation of persons with developmental disabilities business enterprises in state

1 contracts for goods or services, each awarding department shall,
2 consistent with Section 14839, do all of the following:

3 (a) Advertise all upcoming opportunities to bid on competitively
4 bid contracts in the California State Contracts Register and include
5 in the advertisement an Internet link to information for prospective
6 bidders, including, but not limited to, general bidding procedures
7 and how to properly prepare a bid for those contracts.

8 (b) Provide information to persons with developmental
9 disabilities business enterprises regarding training and technical
10 assistance that is available to assist these persons with
11 developmental disabilities business enterprises in understanding
12 and bidding on contracts.

13 8899.54. (a) The Department of General Services shall adopt
14 regulations for the purpose of implementing this chapter. The
15 Department of General Services shall consult with the State
16 Department of Developmental Services with respect to the
17 implementation of this chapter and the adoption of these
18 regulations. Emergency regulations consistent with this section
19 may be adopted without review and approval by the Office of
20 Administrative Law if adopted within 90 days of the effective date
21 of this chapter.

22 (b) The regulations shall include the process and procedures for
23 certifying persons with developmental disabilities business
24 enterprises, consistent with and in coordination with the
25 certification process and procedures for small businesses and
26 disabled veteran business enterprises in Section 14839.

27 (c) The regulations shall require a persons with developmental
28 disabilities business enterprise to provide goods or services that
29 contribute to the fulfillment of the contract requirements by
30 performing a commercially useful function.

31 8899.55. In implementing this chapter, the awarding department
32 shall utilize existing resources such as the State Department of
33 Developmental Services.

34 8899.56. (a) A person or entity shall not:

35 (1) Knowingly and with intent to defraud, fraudulently obtain,
36 attempt to obtain, or aid another person or entity in fraudulently
37 obtaining or attempting to obtain, public moneys, contracts, or
38 funds expended under a contract, that are awarded by an awarding
39 department, to which the person or entity is not entitled under this
40 chapter.

1 (2) Knowingly and with intent to defraud, fraudulently represent
2 participation of a persons with developmental disabilities business
3 enterprise in order to obtain or retain a contract.

4 (3) Willfully and knowingly make or subscribe to any statement,
5 declaration, or other document that is fraudulent or false as to any
6 material matter, whether or not that falsity or fraud is committed
7 with the knowledge or consent of the person authorized or required
8 to present the declaration, statement, or document.

9 (4) Willfully and knowingly aid or assist in, or procure, counsel,
10 or advise the preparation or presentation of a declaration, statement,
11 or other document that is fraudulent or false as to any material
12 matter, regardless of whether that falsity or fraud is committed
13 with the knowledge or consent of the person authorized or required
14 to present the declaration, statement, or document.

15 (5) Willfully and knowingly obstruct, impede, or attempt to
16 obstruct or impede, any state official or employee who is
17 investigating the qualifications of a person or entity represented
18 to be a persons with developmental disabilities business enterprise.

19 (6) Establish, or knowingly aid in the establishment of, or
20 exercise control over, a person or entity found to have violated
21 any of paragraphs (1) to (5), inclusive.

22 ~~(b) Any person or entity that violates any of the provisions of~~
23 ~~subdivision (a) shall be liable for a civil penalty of not less than~~
24 ~~ten thousand dollars (\$10,000) or more than thirty thousand dollars~~
25 ~~(\$30,000) for the first violation, and a civil penalty of not less than~~
26 ~~thirty thousand dollars (\$30,000) or more than fifty thousand~~
27 ~~dollars (\$50,000) for each additional or subsequent violation. A~~
28 ~~person or entity that violates any of the provisions of subdivision~~
29 ~~(a) shall pay all costs and attorney's fees incurred by the plaintiff~~
30 ~~in a civil action brought pursuant to this section, including costs~~
31 ~~incurred by the awarding department for any investigations that~~
32 ~~led to the finding of the violation.~~

33 (e)

34 (b) (1) A person or entity, participating as either a contractor,
35 subcontractor, or supplier, that violates any of the provisions of
36 subdivision (a) shall not bid on a state contract or project for a
37 period of not less than three years. An additional or subsequent
38 violation shall extend the periods of suspension for a period of not
39 less than five years. The suspension shall apply to the principals

1 of the business and any subsequent business formed or financed
2 by, or affiliated with, those principals.

3 (2) A person or entity that fails to satisfy the penalties, costs,
4 and attorney's fees imposed pursuant to subdivision (b) shall be
5 prohibited from further contracting with the state until those
6 amounts are paid.

7 ~~(d)~~

8 (c) The awarding department shall report all alleged violations
9 of this section to the Attorney General who shall determine whether
10 to bring a civil action against any person or entity for violation of
11 this section. *Civil penalties shall not be less than ten thousand*
12 *dollars (\$10,000) or more than thirty thousand dollars (\$30,000)*
13 *for the first violation, and not less than thirty thousand dollars*
14 *(\$30,000) or more than fifty thousand dollars (\$50,000) for each*
15 *additional subsequent violation.*

16 ~~(e)~~

17 (d) An awarding department shall not enter into any contract
18 with a contractor suspended for violating this section during the
19 period of the contractor's suspension. An awarding department
20 shall not award a contract to any contractor utilizing the services
21 of any person or entity suspended for violating this section during
22 the period of the suspension.

23 8899.57. (a) Each awarding department shall annually report
24 to the Department of General Services on the level of participation
25 by persons with developmental disabilities business enterprises in
26 contracts. The information reported shall include, but not be limited
27 to, the following:

28 (1) The percentage of contracts awarded to persons with
29 developmental disabilities business enterprises, including the
30 number of contracts awarded to each type of business enterprise
31 defined in paragraphs (1) to (3), inclusive, of subdivision (g) of
32 Section 8899.51.

33 (2) A description of each contract, including the number of
34 persons with developmental disabilities employed, the nature of
35 the work performed, the wages paid and other employee benefits
36 provided, and the work setting, including the extent to which the
37 work performed by persons with developmental disabilities was
38 in integrated work as defined in subdivision (o) of Section 4851
39 of the Welfare and Institutions Code.

1 (3) If the established goal is not being met, the reasons for the
2 awarding department's inability to achieve the standards and the
3 remedial steps to be taken.

4 (b) Beginning January 1, 2011, and on January 1 of each year
5 thereafter, the Department of General Services shall, in consultation
6 with the Department of Developmental Services, report to the
7 Governor and the Legislature, by department, on the level of
8 participation by persons with developmental disabilities business
9 enterprises under this chapter, including the information required
10 by subdivision (a).

11 8899.58. Notwithstanding any other provision of this chapter,
12 the failure of an awarding department to meet the goals established
13 under this chapter shall not affect the validity or enforceability of
14 any contract subject to this chapter.

15 8899.59. This chapter shall become inoperative on July 1, 2014,
16 and is repealed as of January 1, 2015.

17 SEC. 2. Section 14838.5 of the Government Code is amended
18 to read:

19 14838.5. (a) Notwithstanding the advertising, bidding, and
20 protest provisions of Chapter 6 (commencing with Section 14825)
21 of this code and Chapter 2 (commencing with Section 10290) and
22 Chapter 3 (commencing with Section 12100) of Part 2 of Division
23 2 of the Public Contract Code, a state agency may award a contract
24 for the acquisition of goods, services, or information technology
25 that has an estimated value of greater than five thousand dollars
26 (\$5,000), but less than one hundred thousand dollars (\$100,000),
27 to a certified small business, including a microbusiness, to a
28 persons with developmental disabilities business enterprise, or to
29 a disabled veteran business enterprise, as long as the agency obtains
30 price quotations from two or more certified small businesses,
31 including microbusinesses, from two or more persons with
32 developmental disabilities business enterprises, or from two or
33 more disabled veterans business enterprises.

34 (b) In carrying out subdivision (a), state agencies shall consider
35 a responsive offer timely received from a responsible certified
36 small business, including a microbusiness, from a persons with
37 developmental disabilities business enterprise, or from a disabled
38 veteran business enterprise.

39 (c) If the estimated cost to the state is less than five thousand
40 dollars (\$5,000) for the acquisition of goods, services, or

1 information technology, or a greater amount as administratively
2 established by the director, a state agency shall obtain at least two
3 price quotations from responsible suppliers whenever there is
4 reason to believe a response from a single source is not a fair and
5 reasonable price.

6 (d) This section shall become inoperative on July 1, 2014, and
7 is repealed as of January 1, 2015.

8 SEC. 3. Section 14838.5 is added to the Government Code, to
9 read:

10 14838.5. (a) Notwithstanding the advertising, bidding, and
11 protest provisions of Chapter 6 (commencing with Section 14825)
12 of this code and Chapter 2 (commencing with Section 10290) and
13 Chapter 3 (commencing with Section 12100) of Part 2 of Division
14 2 of the Public Contract Code, a state agency may award a contract
15 for the acquisition of goods, services, or information technology
16 that has an estimated value of greater than five thousand dollars
17 (\$5,000), but less than one hundred thousand dollars (\$100,000),
18 to a certified small business, including a microbusiness, or to a
19 disabled veteran business enterprise, as long as the agency obtains
20 price quotations from two or more certified small businesses,
21 including microbusinesses, or from two or more disabled veteran
22 business enterprises.

23 (b) In carrying out subdivision (a), state agencies shall consider
24 a responsive offer timely received from a responsible certified
25 small business, including a microbusiness, or from a disabled
26 veteran business enterprise.

27 (c) If the estimated cost to the state is less than five thousand
28 dollars (\$5,000) for the acquisition of goods, services, or
29 information technology, or a greater amount as administratively
30 established by the director, a state agency shall obtain at least two
31 price quotations from responsible suppliers whenever there is
32 reason to believe a response from a single source is not a fair and
33 reasonable price.

34 (d) This section shall become operative on July 1, 2014.

35 SEC. 4. Section 14839 of the Government Code is amended
36 to read:

37 14839. There is hereby established within the department the
38 Office of Small Business and Disabled Veteran Business Enterprise
39 Services. The duties of the office shall include:

1 (a) Compiling and maintaining a comprehensive bidders list of
2 qualified small businesses, persons with developmental disabilities
3 business enterprises, and disabled veteran business enterprises,
4 and noting which small businesses also qualify as microbusinesses.

5 (b) Coordinating with the Federal Small Business
6 Administration, the Minority Business Development Agency, and
7 the Office of Small Business Development of the Department of
8 Economic and Business Development.

9 (c) Providing technical and managerial aids to small businesses,
10 microbusinesses, persons with developmental disabilities business
11 enterprises, and disabled veteran business enterprises, by
12 conducting workshops on matters in connection with government
13 procurement and contracting.

14 (d) Assisting small businesses, microbusinesses, persons with
15 developmental disabilities business enterprises, and disabled
16 veteran business enterprises, in complying with the procedures for
17 bidding on state contracts.

18 (e) Working with appropriate state, federal, local, and private
19 organizations and business enterprises in disseminating information
20 on bidding procedures and opportunities available to small
21 businesses, microbusinesses, persons with developmental
22 disabilities business enterprises, and disabled veteran business
23 enterprises.

24 (f) Making recommendations to the department and other state
25 agencies for simplification of specifications and terms in order to
26 increase the opportunities for small business, microbusiness,
27 persons with developmental disabilities business enterprise, and
28 disabled veteran business enterprise participation.

29 (g) Developing, by regulation, other programs and practices
30 that are reasonably necessary to aid and protect the interest of small
31 businesses, microbusinesses, persons with developmental
32 disabilities business enterprises, and disabled veteran business
33 enterprises in contracting with the state.

34 (h) Making efforts to develop, in cooperation with associations
35 representing counties, cities, and special districts, a core statewide
36 small business certification application that may be adopted by all
37 participating entities, with any supplemental provisions to be added
38 as necessary by the respective entities.

1 (i) The information furnished by each contractor requesting a
2 small business or microbusiness preference shall be under penalty
3 of perjury.

4 (j) This section shall become inoperative on July 1, 2014, and
5 is repealed as of January 1, 2015.

6 SEC. 5. Section 14839 is added to the Government Code, to
7 read:

8 14839. There is hereby established within the department the
9 Office of Small Business and Disabled Veteran Business Enterprise
10 Services. The duties of the office shall include:

11 (a) Compiling and maintaining a comprehensive bidders list of
12 qualified small businesses and disabled veteran business
13 enterprises, and noting which small businesses also qualify as
14 microbusinesses.

15 (b) Coordinating with the Federal Small Business
16 Administration, the Minority Business Development Agency, and
17 the Office of Small Business Development of the Department of
18 Economic and Business Development.

19 (c) Providing technical and managerial aids to small businesses,
20 microbusinesses, and disabled veteran business enterprises, by
21 conducting workshops on matters in connection with government
22 procurement and contracting.

23 (d) Assisting small businesses, microbusinesses, and disabled
24 veteran business enterprises, in complying with the procedures for
25 bidding on state contracts.

26 (e) Working with appropriate state, federal, local, and private
27 organizations and business enterprises in disseminating information
28 on bidding procedures and opportunities available to small
29 businesses, microbusinesses, and disabled veteran business
30 enterprises.

31 (f) Making recommendations to the department and other state
32 agencies for simplification of specifications and terms in order to
33 increase the opportunities for small business, microbusiness, and
34 disabled veteran business enterprise participation.

35 (g) Developing, by regulation, other programs and practices
36 that are reasonably necessary to aid and protect the interest of small
37 businesses, microbusinesses, and disabled veteran business
38 enterprises in contracting with the state.

39 (h) Making efforts to develop, in cooperation with associations
40 representing counties, cities, and special districts, a core statewide

1 small business certification application that may be adopted by all
2 participating entities, with any supplemental provisions to be added
3 as necessary by the respective entities.

4 (i) The information furnished by each contractor requesting a
5 small business or microbusiness preference shall be under penalty
6 of perjury.

7 (j) This section shall become operative on July 1, 2014.

8 SEC. 6. Section 19404 of the Welfare and Institutions Code is
9 amended to read:

10 19404. Any state agency, city or county, political subdivision,
11 or district of this state may, without advertising or calling for bids,
12 purchase materials and supplies manufactured and services
13 provided by public or private nonprofit California corporations
14 operating community rehabilitation programs serving persons with
15 disabilities who have indicated an interest in supplying those goods
16 and services and may, on an equitable basis apportion the business
17 among the interested community rehabilitation programs, provided
18 the goods or services meet the specifications and needs of the
19 purchasing agency and are purchased at a fair market price, as
20 determined pursuant to Section 14838.5 of the Government Code
21 by the appropriate state or local agency, and provided that the
22 public or private nonprofit California corporations comply with
23 all of the following requirements:

24 (a) (1) Contract work obtained under this section shall be
25 performed by a labor force which is comprised primarily of persons
26 with disabilities, as measured by the percentage of person-hours
27 of direct labor devoted to the contract work.

28 (2) For purposes of this subdivision, “primarily” means 75
29 percent or greater.

30 (3) Agree to make those elections permitted of any nonprofit
31 corporation under the federal Insurance Contributions Act and the
32 California Unemployment Insurance Code in order to provide
33 social security and unemployment and disability benefits for its
34 employees commencing with its first contract or purchase order
35 under this section and continuing thereafter. In the event that the
36 nonprofit corporation ceases to provide those benefits, any existing
37 contract or purchase order under this section with the corporation
38 is terminated and no further contracts or purchase orders shall be
39 awarded to that corporation for the period of two years after the
40 corporation ceases to provide the benefits. For the purposes of this

1 subdivision, a person with a disability shall be considered an
2 employee when performing productive work.

3 (4) Provide in its articles of incorporation that at least two of
4 the directors of its board of directors shall be comprised of persons
5 with disabilities or the parents, guardians, or conservators of
6 individuals with disabilities. Directors who are also employees of
7 the nonprofit corporation shall not participate in or be present at
8 discussions of the board of directors concerned with
9 labor-management contract negotiations.

10 (5) Provide for disabled employees of the nonprofit corporation
11 benefits and other employer-employee agreements substantially
12 equal to those benefits and agreements entered into between each
13 nonprofit corporation and the representatives designated by a
14 majority of the employees.

15 (6) Not commit any unfair labor practices as defined in Section
16 8(a) of the National Labor Relations Act.

17 (7) Abide by the provisions of the Federal Fair Labor Standards
18 Act, the Walsh-Healy Public Contract Act, the Wagner O'Day
19 Act, and the regulations of the State Division of Industrial Welfare.

20 (8) Contract work obtained under this section shall be governed
21 by the contracting procedures and limitations in Section 14838.5
22 of the Government Code.

23 (b) For purposes of this section a "person with a disability"
24 means any person, other than a person who is blind, who is so
25 severely incapacitated by any physical or mental disability that he
26 or she cannot currently engage in normal competitive employment
27 because of the disability.